Re Rochester Gas and Electric Corporation

INTERVENORS: New York State Department of Law, New York State Consumer Protection Board, City of Rochester, and Genesee Valley Peoples Power Coalition et al.

Cases 28896 et al. Opinion No. 85-13

68 PUR4th 289

New York Public Service Commission

July 9, 1985

APPLICATIONS for increases in electric, streetlighting, and natural gas rates; granted, as modified; commission allows increase in amount of construction work in progress included in rate base.

Revenues, § 2 — Test-year adjustments — Sales for resale.

[N.Y.] Profits on sales of electricity for resale were projected at a level the commission found was reasonably attainable and that would encourage the company to maintain its sales for resale while not exposing it to any undue risk. p. 292.

Revenues, § 2 — Test-year adjustments — Conversion of service.

[N.Y.] Revenues expected from the conversion of steam customers to natural gas service were not included in natural gas revenue requirement because of the uncertainty of those revenues; however, the commission directed that deferral accounting be used, if necessary, to preserve for ratepayers any part of the revenues properly flowed through to them p. 294.

Revenues, § 15 — Sales of property — Loss — Amortization.

[N.Y.] The commission allowed the amortization over seven years of the loss realized from the transfer of land from a utility to its subsidiary on the condition that 80% of the profits from any subsequent sale be flowed back to the ratepayers. p. 295.

Expenses, § 63 — Legal expenses — Outage litigation — Appellate expense.

[N.Y.] Total removal from cost of service of legal expenses related to a plant outage was held to be unwarranted where appellate expenses were expected during the rate year. p. 300.

Expenses, § 63 — Legal expenses — Proposed adjustments.

[N.Y.] Normalization of legal expenses to reflect projected savings from the use of inhouse counsel was rejected where the adjustment could not be shown to be proper and assumptions underlying the proposal were found to be flawed. p. 300.

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Expenses, § 48 — Dues.

[N.Y.] Fifty per cent of a utility's dues for the Edison Electric Institute were disallowed, as well as a portion of its payments to the American Gas Association, and the commission directed the utility to outline the benefits of membership in these organizations in future rate cases. p. 302.

Expenses, § 60 — Insurance and surety premiums — Increase — Documentation.

[N.Y.] An increase for property damage insurance was disallowed where the utility had not submitted documentation for it. p. 302.

Expenses, § 114 — Income taxes — Interest deduction.

[N.Y.] Interest on nuclear fuel shipping and disposal costs was treated as a current deduction to federal income taxes. p. 303.

Return, § 26.4 — Common equity capital — Discounted cash-flow method — Growth rate.

[N.Y.] A discount of 25% was applied to the growth rate used in a discounted cash-flow formula for determining rate of return to reflect the risk of possible disallowance of investment in plant construction. p. 305.

Valuation, § 224 — Construction work in progress — Financial integrity.

[N.Y.] The commission approved inclusion of $150 million in construction work in progress in rate base to afford the utility a reasonable opportunity to meet its cash coverage target, to maintain the utility's financial ratings, and to minimize long-term financing costs. p. 310.

Valuation, § 25 — Rate base determination date — Generating plant — Phase-in plan.

[N.Y.] A proposed preoperational phase-in plan for a generating plant was rejected by the commission where it was held that construction work in progress should be limited to the amount needed for financial integrity and that the utility had failed to demonstrate that the plan was worthy of adoption without the consideration of alternatives. p. 311.

Automatic Adjustment Clauses, § 8 — Belowcost clause — Partial passthrough.

[N.Y.] The commission adopted a partial passthrough fuel adjustment clause as a means of equitably sharing risks between the utility and its ratepayers. p. 312.

Rates, § 657 — Abnormal conditions affecting action — Wage increase.

[N.Y.] Authorization was granted to file a second-stage increase to reflect an expected wage increase. p. 317.

Accounting, § 43 — Consolidated or merged units.

[N.Y.] Separate accounting and record-keeping requirements for gas companies that had merged were dropped to eliminate needless complexity. p. 317.

Apportionment, § 12 — Fixed charges and costs.

[N.Y.] The allocation of electric service customer costs based on a system with minimal capacity was upheld. p. 318.

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Rates, § 336 — Electric service — Customer charges.

[N.Y.] Increases in customer charges for small residential and general users were limited, even though the proposed charges were below marginal customer costs, because a higher charge would have yielded class revenues in excess of those allocated to those classes. p. 319.

Rates, § 381 — Gas — Special factors affecting gas rates — Competitive fuels.

[N.Y.] A proposal to restructure gas rates to produce additional sales from customers who might otherwise use alternative fuels was rejected by the commission because a dramatic drop in the price of fuel oil had made it unlikely that gas could be competitive and because the proposed rate design would have the effect of reassigning revenue responsibility to small customers and would discount rates to classes of customers that included relatively few with dual-fuel capacity. p. 322.

Valuation, § 224 — Construction work in progress.

[N.Y.] Statement, by dissenting commissioners, that construction work in progress should not have been included in rate base at the level approved by the commission because: (1) the plant should have been canceled; (2) approval of the CWIP was tantamount to approval of the utility's proposed phase-in plan without public scrutiny; and (3) the benefits of maintaining a high bond rating were outweighed by the costs to ratepayers. p. 324.

(MEAD and POOLER, commissioners, dissent, p. 324.)

APPEARANCES: Sigrid J. Hammond and Jaclyn A. Brilling, Albany, for the public service commission; Nixon, Hargrave, Devans & Doyle (by Richard N. George, Stanley W. Widger, Jr., and Robert L. Daileader, Jr.), Rochester, and Huber, Lawrence & Abell (by Norman Abell), New York, for Rochester Gas & Electric Corp.; Richard W. Golden, New York, for New York State Department of Law; law offices of Algird F. White, Jr. (by Barbara L. Brennan and James W. McTarnaghan, Albany, for multiple intervenors; Ellen A. Anderson, Rochester, for the city of Rochester; Edgar S. Farrar, Rochester, for Genesee Valley Peoples Power Coalition.

Before Gioia, chairman, and Larkin, Marr, Jerry, Mead (dissenting), Pooler (dissenting), and Schwartz, commissioners.

By the COMMISSION:

Introduction

On August 17, 1984, Rochester Gas & Electric Corp. (RG&E or the company) filed revised tariff schedules designed to increase annual electric revenues by $64.5 million (14.8%), annual

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gas revenues by $8.71 million (2.7%), and annual street-lighting revenues by $1.275 million (12.2%), based on a forecast test year comprising the 12 months ending July 31, 1986. By various orders, the effective date of the proposed schedules was suspended through July 13, 1985.

During the ensuing proceedings, the company revised its rate request to $41.3 million for electric (including street-lighting) and $2.9 million for gas.

As a result of its last major rate case, the company increased its annual electric revenues by $16.27 million and its annual gas revenues by $2.011 million.[1(1)] In a second-stage filing in that case, the company further increased its electric revenues by $4,535,400 (.9%). The second-stage gas revenue increase of $1.271 million was deferred for treatment in the present proceeding, given the possibility that this proceeding might result in a gas rate decrease.[2(2)]

Public statement hearings were held befo re Commissioner Anne F. Mead in the afternoon and evening of September 20, 1984, in Rochester, and numerous persons made statements. Seven days of evidentiary hearings before Administrative Law Judge Edward D. Cohen were held on various occasions between November 13, 1984, and January 25, 1985, in Albany and Rochester. The record in these proceedings comprises over 2,600 pages of testimony and 158 exhibits. In addition to the presentations of the company and the department of public service staff (staff), evidence was offered by the State Consumer Protection Board (CPB), the department of law (DOL), and the multiple intervenors (MI, a group of large industrial customers served by RG&E). Initial briefs to the judge were filed by the foregoing parties and the city of Rochester (the city), and reply briefs were by all parties except the city.

Judge Cohen's recommended decision was issued on April 12, 1985. In it, the judge recommends that the company be allowed to increase rates so as to produce an additional $7.459 million (1.7%) in annual electric revenues (including street-lighting), and required to decrease its annual gas revenues by $1.570 million (0.5%).[3(3)] Briefs and reply briefs on exceptions to Judge Cohen's recommended decision were filed by all parties except the city.[4(4)]

Revenues

Electric Revenues

1. *Retail Sales*

The judge accepted the following stipulated retail sales levels agreed to by the parties:[5(5)]

[Table below may contain distortions.]

Class	Level (gwh)
Residential	1,859
Commercial	1,552
Industrial	1,815
Municipal	408

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Total            5,634
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The company has provided an update that increases this forecast by approximately 10 gwh (approximately $514,400)[6(6)] to reflect increased sales to a major industrial customer. As so updated, the stipulated level of sales is adopted.

2. *Sales for Resale*

[1] The judge recommends adoption of a rate year estimate of $17.5 million of sales for resale profits, and that excesses above the imputed amount, or shortfalls from it, be shared between ratepayers and the company on an 80%/20% basis. (Staff had recommend a figure of $18 million, while the company proposed $15.164 million.) Recognizing the difficulty of measuring with precision the extent of the ongoing decline in sales for resale, the judge followed staff's techniques, based on PROMOD runs for the years 1983 86, but adjusted profit levels to exclude revenue taxes. He thus forecast profits on internal sales[7(7)] of $11.75 million, to which he added staff's $6 million estimate of profits on external sales. He arrived at an estimated $17.75 million profit on sales for resale, which he rounded down to $17.5 million, given what he saw as the speculative nature of the estimate of internal profits.

Although Judge Cohen substantially accepted staff's estimate of profits on sales for resale, we are concerned that the external sales component of staff's figure is unduly influenced by the decline in *internal* sales projected by PROMOD. In RG&E's last case, we forecast profits on sales for resale of $23 million considerably in excess of staff of staff's figure here but even that forecast proved low. And while the recent trend in profit margins on sales for resale has been downward, we do not regard a decline to $18 million as likely.

Staff's PROMOD runs do provide a reasonable basis for projecting profits on internal sales.[8(8)] But PROMOD applies only to internal sales, and projecting external sales using the output of this model is unwarranted, for external sales respond to different factors. Although the parties allude qualitatively to several possible factors or developments in neighboring utility systems that could reduce external sales activities, no one offered a definite basis from which to project future external sales activities. And because external sales are in large part influenced by factors and operating conditions outside the New York Power Pool, we are unwilling to speculate that those conditions will change materially during the rate year.

In these circumstances, we shall project continuation of the $12 million level of profits on external sales achieved on average during the last quarter of 1984, on a rolling 12-month basis. This results in a total imputation of $24 million. We regard that estimate as reasonably attainable, and are satisfied that imputing profits at that level will encourage the company to maintain its sales for resale while not exposing it to undue risk. Consistent with our discussion below of the fuel adjustment clause, profits above the imputed level, and shortfalls from it, will be shared between ratepayers and the company on an 80%/20% basis.

Gas Revenues

1. *Sales to Medium-sized Commercial and Industrial Customers*

The judge believed that either staff's or the company's proposed restructuring of SC No. 1 rates would result in additional gas sales, and he imputed additional sales of 874,000 dekatherms (Dt), equivalent to $961,000 of additional margin. The company excepts and argues that these additional sales may materialize only if the rates of its medium-sized commercial and industrial customers are restructured, in accordance with its own proposal, to be more competitive with No. 6 oil. The judge, however, did not adopt the company's rate restructuring proposal as initially submitted.[9(9)] The company adds that even if the rates were restructured, there would remain considerable uncertainty that the additional sales would occur. The company requests that if its rate structure is not adopted, no imputation in base rates be made of the 874,000 Dt additional sales, but that 80% of any additional sales to medium-sized commercial and industrial customers be flowed through to ratepayers.[10(10)]

Staff responds that, in light of the reduction in gas costs,[11(11)] and the lower revenue requirement in this case, it is likely that actual gas sales will exceed the company's forecast. Also, staff believes that "customers will pay a premium for gas' and this is evidenced by the fact that "the company set its tail-block rate at 115% times the price of oil, presumably because this is what the market would bear.'[12(12)]

For the reasons explained in our discussion of the underlying gas rate design[13(13)] issue, we cannot anticipate that the sales at issue will occur. Accordingly, we shall not impute the additional sales of 874,000 Dts.

2. *Steam Conversions*

[2] In view of our directive that RG&E plan for the abandonment of its steam system by October 1, 1985,[14(14)] staff forecast additional gas sales of about 1,038,000 Dt (equivalent to a margin of about $1.3 million) to customers converting from steam. The judge accepted staff's forecast, rejected as unsupported the company's proposed 15% offset for conservation efficiency, and forecast, as the parties agreed, that attaching the new customers would increase rate year capital additions by $930,000 more than previously projected. The judge's discussion assumed that RG&E's steam service to its customers would be terminated by October 1, 1985, and that no new entity would supply steam service. He properly recommended revising the gas sales estimate if these assumptions did not turn out as expected.

After the parties submitted reply briefs to the judge, we approved RG&E's abandonment plan.[15(15)] The immediate effect of that action on this case was that it undid the parties' basic agreement regarding the proper gas sales forecast. While the company had previously accepted staff's forecast and pressed only for its 15% conservation adjustment, it now objects to the imputation of revenues from sales to converting steam customers. These sales, according to RG&E, are covered by the abandonment plan, which allowed the company to retain the markup on all gas sales to customers on the steam system as of January 31, 1985, until financing costs and bad debts associated with the abandonment are written off. Because the company is to retain the markup, it reasons, this margin should not be reflected in rates, and approval of RG&E's steam abandonment plan requires a two-step adjustment to the gas sales forecast:

1. Reject the 1,038,000 Dt upward adjustment recommended by the judge; and

2. *Reduce* the company's gas sales forecast because in includes projected gas sales to a number of customers who were steam customers as of January 31, 1985.

The company, however, has not calculated the actual number of customers (or the projected gas usage) to be included in the adjustment.

In reply, staff acknowledges that it is difficult to determine the most appropriate treatment of these sales for rate-making purposes, and hence the proper sales level for this case. Staff notes that the margin on gas sales to converting customers "will be retained by RG&E (1) [only] to the extent necessary to cover the financing costs of conversion, (2) with respect to only that portion of the financing costs related to a payback period in excess of three years.[16(16)] It asks, however, that we:

1. Exclude capital additions incurred to attach steam customers to gas service to the extend the resulting revenues from gas sales are excluded from the rate case; and

2. Provide for the eventual flow through to ratepayers of revenues exceeding the costs covered by the financing plan, either by deferral accounting or through the gas adjustment clause.

In view of the uncertainties surrounding this issue, we shall exclude all steam conversion revenues (and, as staff urges, the associated capital costs) from the revenue requirement determined in this case. Deferral accounting shall be used, if necessary, to preserve for ratepayers any part of these revenues properly flowed through to them.

Expenses

Sterling Land Loss

[3] As presented in this case, the only issue relating to the Sterling land concerned the proper period for amortization of the $7.4 million loss associated with the land acquired as the site for the once-planned Sterling nuclear generation plant and since sold by RG&E to a nonregulated subsidiary.[17(17)] The company proposed a two-year amortization period and staff proposed seven years; in either case the unamortized portion would be included in rate base. The difference between the proposed amortization periods amounts to approximately $4.3 million in electric revenue requirement. Judge Cohen recommended staff's seven-year amortization period equal to the remainder of the amortization period for the Sterling loss itself and no party excepts to that recommendation.

Staff's agreement to amortize the Sterling land loss was contingent on its receipt of satisfactory responses to two interrogatories, submitted in lieu of cross-examination of an ill witness, that remained outstanding at the time of the recommended decision. Accordingly, the judge did not reflect the amortization of the loss in his revenue requirement, and asked the parties to update the issue in their briefs on exceptions. In its brief, staff reports its satisfaction with the responses, and notes it has no objection to amortizing the Sterling land loss over seven years.

Like staff, we are satisfied that we should now permit the Sterling land loss to be amortized

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over a seven-year period. In view, however, of the depressed market price at which the land was transferred to RG&E's subsidiary, we believe ratepayers should share in any profit that may be realized on any sale of the land during the amortization period. Accordingly, our approval of the amortization will be conditioned on the company's agreement to flow back to ratepayers 80% of any profit that may be realized on a sale of this land during the seven-year amortization period. (The remaining 20% may be retained by the company as an incentive to obtain a high price.) For these purposes, profit will be the difference between (i) the amount realized on the sale and (ii) the $2.2 million appraised value, plus interest on that amount u ntil the date of sale, plus transaction costs incurred by RG&E, including income taxes paid as a result of the sale. If the land is sold piecemeal, profit on each transaction shall be measured, in the foregoing manner, against that portion of the $2.2 million appraised value reasonably associated with the parcel being sold. Any losses on piecemeal sales may be netted against the profits to be returned to ratepayers, but if total losses exceed gains (or the entire parcel is sold at a loss) the net loss will not be flowed through to ratepayers. Finally, our approval of the amortization is conditioned on RG&E agreeing to discontinue its pending lawsuit related to this issue.

Legal Expenses

Applying an inflation factor to base year legal expenses, the company estimated rate year legal expenses of $2.077 million (electric) and $333,000 (gas). The bulk of its legal expense claim reflects payment for services rendered by the company's general counsel, Nixon, Hargrave, Devans & Doyle (Nixon Hargrave). Before the judge, staff sought disallowances of $565,000 to normalize the costs associated with the Ginna outage proceeding,[18(18)] and $293,000 representing staff's calculated savings to the company if 60% of RG&E's legal work could be performed by in-house counsel. DOL sought disallowances of $365,000 associated with Ginna and $50,000 (corrected from an original figure of $71,000) to remove nonrecurring costs in connection with the Sterling abandonment.

The judge rejected staff's proposal to disallow totally as nonrecurring the electric legal expense of $565,000 associated with the Ginna outage proceeding because he believed, among other things, that it "clearly goes too far in failing to recognize the continuing incurrence of Ginna-related legal expense into the rate year.'[19(19)] He found as well that other proceedings e.g., a Nine Mile 2 prudence proceeding would arise in the rate year to replace the Ginna outage proceeding. Similarly, the judge rejected DOL's proposals to disallow RG&E's $50,000 legal expense associated with abandoned Sterling nuclear project and $365,000 of the Ginna legal expenses. In rejecting the proposed Sterling adjustment, the judge believed that legal costs associated with the Sterling abandonment would continue to be incurred, and if they did not recur, it could reasonably be assumed that costs of similar magnitude would occur. And while the judge regarded DOL's Ginna disallowance figure as more reasonable than staff's for it recognizes that some Ginna-related expense will continue into the rate year as the case is pursued in court he nevertheless rejected it on the grounds that other cases would arise to replace Ginna and that the adjustment would reduce the allowed legal expense to less than the actual figure of 1981 a result he regarded as unreasonable on its face.

Judge Cohen also rejected staff's adjustment to reflect the savings it believed would flow

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from diminished reliance on outside counsel. Staff calculated its figure by assuming that 60% of the company's legal work could be performed in-house at a cost of $60 an hour rather than Nixon Hargrave's rate of $88 an hour. Judge Cohen, however, found staff's method flawed in its omission, for example, of any allocation to the hypothetical in-house legal department of any capital or overhead costs.

Finally, the judge rejected staff's proposal to require RG&E to provide (a) extensive billing detail of Nixon Hargrave expenses and (b) a cost benefit analysis justifying its exclusive reliance on outside counsel. The judge believed that requiring such analyses would impair management's prerogative of controlling the method of receiving legal services. The judge recommended that, in lieu of imposing various filing requirements regarding RG&E's legal expenses, the company and staff confer to determine satisfactory documentation for auditing RG&E's legal expenses.

Given these conclusions, and citing as well a recent decision in which we applied an inflation factor to base year medical expense,[20(20)] the judge increased the test-year level by an inflation factor to arrive at the rate year expense allowance. Staff and DOL have excepted. Their exceptions and the company's replies will be discussed by topic and will be followed by a general discussion.

1. "*Normalizing' Adjustments*

Staff excepts to the judge's finding that other proceedings primarily a Nine Mile 2 prudence case will arise in the rate year and their legal costs will replace the Ginna costs. Citing the Uniform System of Accounts,[21(21)] staff argues that legal costs associated with prudence proceedings should be capitalized. Hence, the Nine Mile 2 costs cannot be regarded as replacing the nonrecurring Ginna costs.

Staff continues that the other nonrate proceedings in which RG&E may be involved will not generate legal expenses equal in magnitude to those for Ginna. It adds that it is wrong to lump together legal costs of small or moderate size rate year proceedings as a substitute for the Ginna case. Staff buttresses its argument with the recent Niagara Mohawk decision in which we rejected the company's claim that general statement about other possible offsetting expense increases could be used as the basis for rejecting staff's adjustment to normalize PCB cleanup expenses.[22(22)]

Staff next argues that RG&E's legal costs have increased since 1980 not by 10% annually,[23(23)] as the company argued, but by 13% annually for the gas and electric departments. The average inflation rate for that same period was only 6.15%. Further, since the company's legal expenses fluctuate so erratically year to year ranging from an increase of 37.4% over the previous year to a drop of 13.2% historical averaging (or normalization) should be the forecasting mechanism. In addition, staff notes that legal expenses for calendar year 1984 are 12.7% less than for the base year, and, despite a "downward trend' in actual expenses, the company requests an allowance representing an increase of 26.3% over calendar year 1984, or an increase of 19.2% over the company's five-year average electric and gas legal expenses.

DOL, meanwhile, believes that the judge improperly relied on the recent Rochester Telephone case[24(24)] in treating legal costs as one of a pool of expenses to which an inflation

factor is applied. DOL notes that the judge relied on a section of that case which dealt exclusively with hospital and surgical insurance costs. Further, even if an analogy can be properly drawn between the expenses, DOL believes, we should decline to apply this "policy' here because RG&E's legal expenses have decreased by 13% between calendar years 1983 and 1984.

DOL argues further that although some Ginna-related legal expenses will be incurred during the rate year, they will be at a reduced level.[25(25)] Thus, DOL believes that its $200,825 allowance[26(26)] for Ginna expenses is sound and even generous. DOL emphasizes that ratepayers should not be forced to pay for "a contingent expense which is speculative in nature' but rather should receive the benefit of the "immediate and quantifiable savings.'[27(27)]

In its lengthy reply, the company points out that staff is alone in seeking total disallowance of Ginna-related expenses. The judge believed that staff's adjustment went "too far,' RG&E observes, and DOL recognized that because various parties are seeking judicial review of the Ginna order, the company will incur some legal expenses related to Ginna.

The company goes on to insist that rate year legal expenses will be similar to legal expenses in past years and substantial enough to offset any reduction in the Ginna outage legal expense. The company recognizes the risk in trying to identify all of the offsetting matters, but claims we have elsewhere "implicitly recognized this difficulty by providing for unidentified legal expenses in rate year allowances.'[28(28)] In any case, the company continues, it did identify some offsetting legal expenses, the largest of which is the Nine Mile 2 prudence case, which, in the company's opinion, will "make the Ginna outage proceeding seem like an "economy tour."[29(29)]

The company believes that its Nine Mile 2 legal expenses should not be capitalized because they will not be incurred in connection with *construction*, as contemplated in the Uniform System of Accounts. The company argues that a prudence proceeding is not "necessary' for the construction and operation of a plant. Rather, a prudence proceeding, in the company's view, should be seen as part of a rate case, for prudence proceedings focus on what plant costs will be included in rate base. The company adds that the cap we have applied to gross plant expenditures for Nine Mile 2 includable in rate base does not include estimates of the costs of a prudence proceeding. Furthermore, regarding Shoreham, the company asserts that while LILCO may have had incentive to capitalize these costs, "the issue here is proper accounting, not what another utility did in another proceeding.'[30(30)]

The company also responds to staff's claim that other identified offsetting proceedings will not impose significant legal expenses during the rate year. It contends that proceedings scheduled to end early in the rate year may be delayed and that, in any event, substantial legal costs for these matters could be incurred during the rate year for briefs on exceptions, briefs opposing exceptions, applications for rehearing, and court review.

Finally, the company contends that its test period legal expense level is consistent with its previous historic levels. In the company's view, staff is unreasonably selective in using 1984 calendar year electric legal expense data. The company asserts that the record shows a steady increase from 1980 to 1984 in total legal costs, with an average annual compound growth rate of 9.2%. And it adds that the test period electric and gas legal expense already reflects a decrease of $332,000 from the previous comparable period despite an increase in the cost of legal services

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due to inflation.

2. *Allowance for "Normal' Activities*

The thrust of staff's argument here is that the company did not meet its burden of proof, for even though RG&E will admittedly incur some legal expenses in the rate year, RG&E has not provided in detail adequate "unit cost information to substantiate [total recovery of] such a large expense.'31(31) In lieu of total disallowance, however, staff would calculate the non-Ginna-related expenses by estimating that 60% of RG&E's legal matters could be performed by in-house counsel at an hourly rate of $60. RG&E would thus save $293,000. Staff admits that its method for computing the adjustment is imprecise. Nonetheless, it argues the company's legal expenses should be reduced because the company (1) has shown indifference to controlling its legal expense; (2) has adamantly refused to seriously consider hiring in-house counsel; and (3) inadequately reviews its legal expenses.

To demonstrate RG&E's indifference to the amount of its legal expense, staff claims that RG&E accepts Nixon Hargrave's bills without question and seldom, if at all, requests the Nixon Hargrave computer print detailing the expense. After citing several statements by company witnesses that allegedly evince RG&E's indifference, staff assets that such indifference should not be tolerated.

In arguing that the company has refused to consider using in-house counsel, staff asserts that the record lacks evidence showing that RG&E has prudently decided that it would not benefit by changing its legal representation. In fact, staff asserts, the record shows the contrary. For example, staff says a 1981 management audit, relied on by the company, shows only that RG&E is satisfied with its legal representation, not whether in-house counsel should be hired. Staff notes that a management audit conducted at Rochester Telephone demonstrated that legal expenses could be reduced by assuming legal matters internally.

To demonstrate the inadequacy of the company's procedures for reviewing Nixon Hargrave's bills, staff lists several alleged "failings,' includi ng posting errors and inadequate records of adjustments made in response to challenges. Staff also considers inadequate the judge's recommendation that staff and RG&E confer with a view toward resolving staff's auditing concerns, and instead recommends a detailed procedure by which it would have RG&E request and approve expenditures for legal services.

Staff concludes that some adjustment is necessary even though its method is flawed, and that RG&E should be directed to cooperate with staff and in an independent study to determine potential legal cost savings. It asks as well that we impute some productivity adjustment improvement in legal services until RG&E shows that no improvement to productivity can be achieved.

After noting that RG&E "does not have a single lawyer on its staff32(32) while several New York utilities do have in-house legal staffs, DOL joins staff in requesting that RG&E at least be ordered to conduct a study to determine the cost savings of having in-house counsel.

In response, the company strenuously objects to staff's assertion that it does little procedurally to control and monitor its legal service costs. The company outlines in detail the cost-effective

procedures it says it has implemented.[33](33) Given those procedures, the company believes it adequately monitors legal costs.

RG&E also objects to staff's and DOL's request for an order requiring the company to cooperate in an independent study of the use of inside counsel. The company bases its objection on three grounds cost justification, management prerogative, and feasibility. It contends, first, that use of in-house counsel would increase RG&E's legal costs. In support of this position, it alleges that, when properly applied, staff's own method establishes that the hourly cost of Nixon Hargrave services to RG&E is *less* than the hourly cost of in-house counsel.[34](34)

The company next argues that it is within management's prerogative to choose legal representation, and, as a matter of law and policy, that choice should stand unless it can be shown to be abusive, even if the choice results ultimately in a higher cost of service. Cost should not be the sole criterion in selecting counsel, RG&E claims, because the "quality of service both perceived and actual '[35](35) are equally important. RG&E continues that the record shows that the company is quite satisfied with the quality of Nixon Hargrave's service.

Finally, the company states that a cost/benefit study is not feasible, for it is extremely difficult to measure accurately the total comparable costs and equivalent billable hours for a hypothetical in-house counsel.[36](36) Moreover, the intangibles such as quality and value of the legal service rendered are difficult to measure by a cost/benefit study, and the company recalls that its 1981 management audit concluded that "it appears that the company's requirements for legal services are being met through the use of outside counsel in a cost-effective manner.'[37](37) The company also cites a decision by the Ohio Public Utilities Commission that rejected a similar cost/benefit study proposed in a proceeding before it.[38](38)

3. *Discussion*

[4, 5] The parties have raised three issues regarding RG&E's legal expenses:

1. Whether the legal expenses should be normalized to reflect nonrecurring Ginna expenses.

2. Whether the "normalized' level of legal expenses should be reduced to reflect an assertedly more reasonable allowance based on use of in-house counsel.

3. Whether the company should perform some type of cost savings study.

Total removal of the Ginna-related expenses i.e., $565,000 from the base used to project rate year legal expenses is unwarranted because the case has gone to court and it seems clear that RG&E will incur some appellate expenses for that case during the rate year.

Partial removal, however, can be justified, for many of the Ginna legal expenses i.e., practically all except those related to court review will not recur. A DOL witness e xplained that

"[l]itigation concerning the unscheduled outage at Ginna will continue during the rate year but only as an appeal at a much reduced cost. During the test year, RG&E expended at least $565,349, or $47,113 per month, on legal costs for the Ginna proceedings. By contrast, since the end of the test year RG&E spent $133,885, an average of $16,736 per month, on legal expenses for the Ginna outage inquiry. This is a difference of $30,377 per month. Thus it is reasonable to

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assume that RG&E's legal expenses in the rate year will be at least $364,524 less than projected because of the reduced cost of Ginna outage litigation.'39(39)

In criticizing DOL's calculations, the company contended that the Ginnarelated legal expenses during the rate year will not be as low as the average monthly expense during the eight months following the test year. On balance, however, DOL's proposal fairly reflects the expectation that legal expenses related to Ginna will be reduced during the rate year. The question then becomes whether the resulting normalizing adjustment is obviated by other proceedings that can be expected to generate legal expenses to replace those for Ginna.

One major proceeding on the horizon is the Nine Mile 2 prudence investigation. As staff argues, however, the Uniform System of Accounts provides that legal expenses related to the construction of electric facilities may be capitalized, and jurisdictional utilities in fact have capitalized these kinds of legal expenses, including, for example, those related to the Shoreham prudence case and the previous Nine Mile 2 proceeding (Case 28059). Expenses related to the Nine Mile 2 prudence case thus will not necessarily replace those incurred in the Ginna proceeding, and the prospect of a Nine Mile 2 proceeding does not argue against a normalization adjustment.

The company's argument that other proceedings will offset any reduced expenditure level related to Ginna in the rate year also is unpersuasive, for it is questionable that these expenses will rise to the level of those incurred for the Ginna case. Accordingly, RG&E's legal expenses will be adjusted as proposed by DOL.

Regarding the further adjustment to normalized expenses, we conclude the judge properly rejected as flawed staff's proposal to assume that 60% of the legal work could be performed in-house at a cost of $60 an hour. The judge's extensive criticisms of staff's method40(40) are largely valid, and even staff no longer presses for adoption of its specific proposal, arguing only that its concerns about the company's control over its legal expenses warrant some adjustment. But while these concerns provide added warrant for our adoption of the DOL adjustment previously discussed, staff has not shown any specific further adjustment to be proper.

Turning next to the proposals for cost/benefit analyses, independent studies, or informal meetings between staff and the company, we recognize the seriousness of staff's concerns and note the inadequacy of the company's present manner of controlling its legal costs. We shall therefore direct the company to consult and cooperate with staff in developing internal procedures that will ensure a reasonable degree of control over legal expenses and provide the documentation needed to audit these expenses in rate cases.41(41) Staff should keep us apprised of the progress being made in this area and advise us of any need for further action on our part.

Finally, in a related procedural matter, staff asks that we state definitively that it is proper, in probing the company's claim that legal costs are controlled, to cross-examine a company witness about whether cost/benefit analyses were conducted by the company before pursuing court cases. The judge considered this line of cross improper, believing that the "rationale as to why the suit is being brought, what the chances of success are . . . [and] what the benefit is [to the company] of any particular outcome' are not relevant to a rate proceeding.42(42)

This issue is one best resolved by administrative law judges on a case-by-case basis, with due

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regard both for staff's duty to probe a company's expenses and for the risk that questioning along this line could compromise a company's position in pending litigation. The judge's decision in this case, accordingly, should not be seen as binding in other proceedings.

Other Expenses Issues

[6] Judge Cohen resolved several other expense issues, and no exceptions have been taken to his recommendations. We adopt those recommendations for purposes of this proceeding. We note in particular his disallowance of 50% of RG&E's dues to Edison Electric Institute, consistent with our decision in other recent cases,[43](43) and of a portion of its payments to the American Gas Asso. In future cases, we expect a presentation on the benefits of membership in those organizations.

Updates

1. *Insurance Premiums*

[7] The company has submitted two updates to its premiums for property damage insurance (increase of $156,448) and excess public liability insurance (increase of $986,669) and requests that we accept these postrecord adjustments as known changes.

The property insurance premium increased by 50% over the previous level, and is due on the September 18, 1985, renewal date. Staff urges total disallowance of this expense because it is based on a broker's estimate conveyed by telephone "tenuous information,' in staff's view, that cannot support a "known change.'

The excess public liability insurance premium increased by 362% (or $986,669) over the previous level, and was paid around May 1, 1985. Staff objects less to this premium because the broker has "placed' the major portion of the policy and the company has received an actual written premium. Staff therefore would allow that documented portion of the adjustment as a known change.

Staff is right that the company should only recover those amounts that can be documented. The company now has documented that it has actually paid an increase of $986,669 for the excess public liability insurance premium, and thus it will be allowed to recover that amount. As comparable documentation has not been submitted for the property insurance, no allowance for any increase will be permitted.

2. *Other Updates*

The judge recommends that our final decision reflect the latest known data with respect to the following matters: (1) the GNP deflator; (2) the employee complement; (3) the short-term lines of credit ultimately approved; and (4) projections of deferrals relating to excess returns on Oswego 6 inventory. The company expresses no opposition to these updates as proposed by staff, and they are adopted.

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Federal Income Taxes

[8] The judge rejected staff's argument that the company should have reflected, in the calculation of its rate year income tax liability, the deductibility of interest associated with nuclear fuel burned before April 7, 1983. While this deduction was reflected in the income tax allowance in the last case, Judge Cohen credited the company's argument that the 1984 Tax Reform Act has since imposed additional requirements making it harder to take this deduction on a current basis. In view of the resulting uncertainty, the judge declined to expose RG&E to the earnings shortfall that would ensue if the deduction were reflected for rate-making purposes but disallowed by the Internal Revenue Service (IRS). Finally, he noted that Ohio Edison had sought an IRS ruling on the matter, and directed the company to provide that ruling to us if it became available before our decision.

In its exceptions, staff argues that until the IRS rules on Ohio Edison's request, the issue should be resolved in favor of RG&E's ratepayers and the interest treated as currently deductible. Staff observes that if the IRS ruling turns out to be adverse to RG&E, and the impact on its revenues is significant, the company can petition for the proper relief.

In its reply brief on exceptions, the company reports that it has now decided to treat the interest on nuclear fuel shipping and disposal costs as a current deduction and therefore does not oppose staff's exception. It emphasizes, however, that its "determination is not based upon staff's rationale,'[44(44)] but rather on its belief that what it still expects to be an adverse IRS ruling may be subject to eventual reversal in court. It therefore seeks assurance that its aggressive tax posture will not expose it to earnings deficiencies if it proves unsuccessful, and that it will be made whole even if the adverse effect on its earnings is not "significant.'

The company's position is reasonable. In providing the requested assurance, we renew our encouragement of responsibly aggressive tax stances by jurisdictional utilities.

Rate of Return

Applying a standard discounted cashflow (DCF) analysis and thus declining to use staff's two-growth version Judge Cohen recommends a 15.7% cost of equity, subject to update. This return on equity comprises a yield of 11.52% growth of 4.08%,[45(45)] and a premium of 0.1% for issuance costs. The judge also recommends adoption of the company's capital structure and its senior security cost rates, which were uncontested throughout this proceeding. The judge thus recommends an overall return of 12.41%, derived as follows:

[Table below may contain distortions.]

AVERAGE COST OF CAPITAL
RATE YEAR PER JUDGE

	Amount (000)	Per Cent	Cost Rate	Weighted Cost
Long-term Debt	$700,240	46.27	10.07%	4.66%
Preferred Stock	143,864	9.50	8.56	.81
Common Equity	669,386	44.23	15.7	6.94

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$1,513,490	100.00	12.41%

Staff and CPB except with respect to the yield while the company excepts with regard to growth. The issues are discussed in turn.

Yield

Staff excepts to the judge's use of a projected dividend of $2.28 in his DCF analysis, and instead proposes a projected dividend of $2.25. This change would reduce the yield from 11.52% to $11.36% and thus reduce the judge's allowed return from 15.7% to $15.54%.

The judge based his projected rate year $2.28 dividend on "two dividends at the current 55 quarterly rate and two dividends at a 59 rate.'[46(46)] Staff believes that use of the 59 quarterly dividend improperly implies a growth rate in 1986 of 7.3%,[47(47)] which is out of line with the judge's adjusted long-term growth rate of 4.08%. Staff argues that its $2.25 projected dividend, which is the average of staff's 1986 projected dividend of $2.30 and the current $2.20 dividend, is appropriate, for it implies a growth rate of 4.5%, an is more consistent with the judge's long-term growth rate.

CPB, meanwhile, offers an update of the yield and, like staff, questions whether the judge's projected dividend is consistent with his growth factor. The board computes a yield of 10.7% and a return on equity of 14.88%.

The company responds that staff's argument for a $2.25 forward dividend rate amounts to a "colossal quibble,' and sees staff's argument that the implied 7.3% growth rate is "out of line' as merely a "mathematical exercise.'[48(48)] The company notes that its latest dividend increases, from $2.04 to $2.20, comes to 7.8%. The company claims that in the electric industry, there are few cases in recent history in which the dividend growth rate has not substantially exceeded other growth rate measures. RG&E continues that even though we have rejected actual dividend growth rate experience as a measure of the DCF long-term growth rate, the yield component of the DCF usually reflects the current dividend rate projected forward into the rate year. And "that forward dividend increase, involving a short-term projection may and DCF growth rate.'[49(49)] CF growth rate.'[49(50)]

Staff's projected 1986 dividend of $2.30, when averaged with RG&E's current dividend of $2.20 implies a growth rate of 4.5%, which is reasonably consistent with the judge's corrected long-term growth rate of 4.3%. The dividend assumed by the judge, in contrast, is out of line with his growth rate. Staff's exception regarding the projected dividend is therefore granted.

Growth

[9] Using a 38% retention ratio (the average for 1979 83) and investors' expected return of 15%, Judge Cohen derived a 5.7% growth rate. Following the precedent of the recent Niagara Mohawk case,[50(51)] he then reduced that rate by 25% to reflect the discount that he believed investors would apply because of factors relating to Nine Mile 2; i.e., the incentive rate of return

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(IROR), the cost cap ($5.4 billion), and a possible prudence adjustment.

On exceptions, RG&E continues to advocate its proposed growth rate of 6.08% (computed from a 38% retention ratio and investors' expected return of 16%). And while not acknowledging that a Nine Mile 2 "discount' is proper, it maintains that if one is to be applied, it should not be the 25% of Niagara Mohawk, but the 10% of the more recent NYSEG case.[51(52)] Applying a 10% adjustment even to the judge's starting point of 5.7%, the company observes, would suggest a growth factor no less than 5.13%.

More fundamentally, RG&E challenges the premise for the Nine Mile 2 adjustment applied in Niagara Mohawk and NYSEG. The company notes that the judge, in rejecting staff's two-growth model, found the long-term and short-term growth components to be substantially the same, and it maintains that in declining to use staff's (or CPB's[52(53)]) method, he effectively rejected any rationale for a Nine Mile 2 adjustment. The company insists there is no evidence that investors are "discounting' long-term growth on account of Nine Mile 2 and maintains further that "investor perception of the risk associated with a possible rate base disallowance [due to Nine Mile 2] would, if anything, *raise* the investor's return requirement.'[53(54)] The company continues that two factors show the judge misconstrued investors' perceptions:

1. recent increases in the price of the company's stock have brought its market price very close to its book value, suggesting that investors do not expect any Nine Mile 2 penalty to be of grave significance; and

2. any Nine Mile 2 adjustment would require an accounting adjustment to plant, which would have only a one-time impact on earnings, and the impact on the long-term growth rate would not approximate the 25% adjustment used in Niagara Mohawk.

In response, staff disputes the company's allegation that "the ALJ in this case effectively rejected any rationale for Nine Mile [2] growth rate adjustment.'[54(55)] Staff argues that the judge adopted staff's unadjusted growth rate of 5.7% before considering the effects of potential Nine Mile 2 disallowance, and, only afterwards did the judge recommend an adjustment consistent with Niagara Mohawk. Hence, staff maintains that the judge adopted staff's recommendation for a growth adjustment that reflects concerns over Nine Mile 2 disallowances.

Staff also disagrees with the company's recommendation to use the 10% "discount' adopted in NYSEG. Staff points out that the different growth rate discount adjustments in Niagara Mohawk (25%) and NYSEG (10%) reflect in part the relative impacts of Nine Mile 2 on each company's rate base. Nine Mile 2 comprises 38.75% of Niagara Mohawk's rate base, but only 26.47% of NYSEG's. The comparable figure of RG&E is 54.08%, making the Niagara Mohawk 25% adjustment conservative, in staff's view. Staff further compares the impact of a hypothetical $1 billion disallowance of Nine Mile 2 costs[55(56)] on the allowed returns in the instant case and in Niagara Mohawk, and demonstrates that the impact on Niagara Mohawk's allowed return would be 195 basis points versus 265 basis points for RG&E.

CPB, similarly, disputes the company's claim that "discounting' the growth rate is improper inasmuch as increased risk suggests an increased cost of capital. The boa rd observes that investors assume that earnings levels and growth rates may be affected by Nine Mile 2 uncertainties, remember that we reduced Niagara Mohawk's growth rate by 25%, and recognize

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we may do the same for RG&E. The factors are taken into account in the company's market price.

CPB criticizes the company's argument that a rate base disallowance would have only a "one-time impact' on earnings. It points out that a write-off may be spread over several years, causing a prolonged diminution in investor's growth rate expectations.

CPB also argues that if only a 10% adjustment is ordered, RG&E's calculated retention growth rate should not be used as the base to which the adjustment is applied. RG&E's retention growth rate is based on only one year's data, and, CPB says, we have never used so short a period, which may be skewed by unusual events, to determine the DCF growth term. A five-year period, CPB notes, is the usual measure. CPB adds that RG&E has failed to reflect in its growth rate calculation the prospect that earnings slippage in the rate year would reduce retention growth rates closer to historic levels.

CPB also disputes the company's claim that its DCF cost of equity is understated because it does not consider the added risk of a partial passthrough fuel adjustment clause (FAC). CPB argues that the company has not shown that stockholders and rating agencies believe that a partial passthrough FAC increases risk. Moreover, since a modified FAC was first applied to Niagara Mohawk, CPB notes investors have reflected the cost of any increase in risk in their market-to-book ratios. Accordingly, the board concludes, "in granting the company an allowed return which will produce a market-to-book ratio of 1, the ALJ has adequately compensated investors for any real concern they may have regarding the effect of a [modified FAC] upon the equity capitalization rate.'[56(57)]

DOL, finally, opposes the company's exception to the judge's recommended 15.7% return on equity because "it contradicts the testimony of its own witness in this case'[57(58)] and because it advocates a return 16.8% inconsistent with that granted the other cotenants. While the company's witness initially recommended a return of 19.4% to 19.9%, his calculation used a growth factor of 5% to 5.5%, and adding that growth to a current yield suggests a return of 15.4% to 15.9% a range that encompasses the judge's recommendation. Regarding the other cotenants, DOL notes that in their most recent rate cases, we authorized equity returns of 15.5% (Niagara Mohawk and NYSEG), 15.7% (Central Hudson), and 16.2% (LILCO). RG&E, DOL argues, should not be compared to financially strapped LILCO or recently derated Central Hudson, but instead to Niagara Mohawk and NYSEG, which, like RG&E, have been able to finance their shares of Nine Mile 2 without financial "difficulty.' Thus, in DOL's view, a 15.5% return on equity would be proper for RG&E.

As suggested by the replies to RG&E's exception, the company has shown no reason why the type of analysis consistently applied to the other Nine Mile 2 cotenants in their recent rate cases should not be applied to RG&E as well. We shall, therefore, apply a Nine Mile 2 discount to the conventionally determined growth rate. Judge Cohen computed that conventional rate in a reasonable manner, and his application of a 25% discount, following Niagara Mohawk, properly reflects the relative impact of Nine Mile 2 on RG&E's rate base. Accordingly, we deny the company's exception ad adopt the judge's growth rate, as corrected, of 4.3%.

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Conclusion

On the basis of the foregoing discussion, the return on equity suggested by DCF analysis is 15%, comprising (1) the judge's corrected growth figure of 4.3%; (2) an updated yield of 10.6%, based on staff's projected dividend and reflecting trading over a recent 20-day period; and (3) the agreed upon issuance premium of .1%. We adopt that figure as consistent with the record as a whole. The overall rate of return comes to 12.09%, computed as follows:

[Table below may contain distortions.]

AVERAGE COST OF CAPITAL
RATE YEAR PER COMMISSION

	Amount (000)	Per Cent	Cost Rate	Weighted Cost
Long-term Debt	$700,240	46.27	10.05%	4.65%
Preferred Stock	143,864	9.50	8.56	.81
Common Equity	669.386	44.23	15.0	6.63
	$1,513,490	100.00		12.09%

Cash Flow and Coverage

The judge recommended the inclusion of $100 million more in construction work in progress (CWIP) in the company's rate base[58(59)] to permit RG&E to achieve a cash coverage target i.e., coverage excluding AFC of 2.6 times. Prefacing that determination, the judge noted that:

"The determinations reached to this point [i.e., prior to the inclusion of CWIP in this case] indicate a required electric rate decrease of $12,392,000 and a gas rate decrease of $1,570,000. Revenues at this level will provide pretax interest coverage of 3.28 times with AFC and coverage of 2.31 times without AFC.'[59(60)]

He noted as well that, given his other decisions, each $10 million of CWIP in rate base would increase the electric revenue requirement by about $2 million.

DOL, CPB, and the company except. Their exceptions and the company's responses are set forth in turn and are followed by a discussion.

1. DOL

DOL would exclude the additional CWIP because it is not needed to preserve RG&E's bond rating and should not be used to phase in Nine Mile 2 costs. (DOL notes the judge also rejected the latter rationale, which is discussed in the next section of this opinion.)

DOL notes that RG&E has kept its Standard & Poor's (S&P) A- rating for nearly five years despite various adverse developments, including Long Island Lighting Co.'s near default, increased project costs, rising inflation, and increased oil costs. The rating was maintained, DOL

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goes on, in 1984, even when the company's cash coverage was only 2.26 times; thus, a 2.31 times cash coverage, DOL believes, will support the rating. Also, rating agencies will view RG&E more favorably since Nine Mile 2 is scheduled to begin commercial operation just two months after the end of the rate year. Furthermore, DOL believes that the record does not demonstrate the level of increased financial costs that, according to the judge, ratepayers would bear if RG&E were downrated. DOL cites as well the absence of any testimony by a professional securities analyst concerning the possibility of a downrating of the company's securities.

Finally DOL argues that the additional CWIP should not be used to phase in Nine Mile 2 costs; rather, Nine Mile 2 costs should be phased into rate base over several years after the plant comes on line so that those who actually use the power will be paying for it.

The company responds that the thrust of its efforts for improved cash flow is focused less on the need to avoid a derating than on the need to strengthen its "financial position in light of the business and financial risk factors confronting it.'[60(61)] The company offers a list of the risk factors it says it is facing, and adds that precedent and the record in this case provide "an adequate basis upon which to apply sound reason and judgment in formulating regulatory policy.'[61(62)]

2. *CPB*

In opposing the inclusion of additional CWIP in rate base, CPB notes initially that the additional $100 million of CWIP would increase RG&E's revenue requirement by $19.9 million and more than offsets the "conventional . . . revenue decrease of $12.4 million.'[62(63)] In the board's view, the judge's analysis is flawed because it assertedly

1. disregards uncontroverted facts;

2. relies on the unsupported assumption that RG&E's projected $40 million July, 1985, bond issuance before or at the very start of the rate year may slip *and thus bear an increased cos t rate because of rate year coverages lower than the judge recommended; and*

3. fails to consider that the increased costs to ratepayers of a possible derating will be far less than the inclusion of the additional $100 million of CWIP into RG&E's rate base.

CPB asserts that the company does not expect to issue any bonds or common stock during the rate year and for several years thereafter, and that any rate increase allowed here "will not affect coverage levels examined by the rating agencies at the time of the July, 1985, bond issuance.'[63(64)]

CPB particularly attacks the judge's assumption that the July, 1985, bond issuance may slip and argues that he record does not support this assumption nor has the company suggested any slippage. CPB adds that even assuming a delay, a year must pass, at the very least, before rate year coverages will be published and available for rating agency review. And even assuming a delay, coverages during the interim period would improve, as interest expense related to this debt would be delayed.

CPB also challenges the judge's conclusion regarding increased costs to ratepayers in the

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event of a bond derating, claiming the judge failed to calculate the interest cost penalty or compare it with the $19.9 million increase in the revenue requirement that would result from including $100 million of CWIP in rate base. Moreover, CPB contends that there is no record evidence to support the judge's view that short-term debt costs would increase if the company's coverages were to decline from his recommended level.

Like DOL, CPB notes that RG&E has maintained its bond rating in the past during more difficult times, and notably in 1983 and 1984 when RG&E's cash coverage levels were approximately 2.3 times. CPB continues that if RG&E's entire revenue request were approved assuming a 15.25% return without the additional CWIP, cash coverage would be 2.48 times in 1986 and 4.26 times in 1987, by which time the company's construction costs will be financed internally.

The company criticizes CPB's argument for two reasons.[64(65)] First, the company emphasizes that its primary reason for seeking additional CWIP is to improve its credit standing and its financial protection in light of increased business risks; avoidance of bond derating, it says, is secondary. Second, the company alleges that CPB's cash-flow and rate of return arguments are inconsistent. It claims CPB endorses an adjustment to the DCF growth rate on account of investors' perceptions of Nine Mile 2 risks but ignores those risks in arguing against RG&E's need for additional cash flow to improve its financial posture.

3. RG&E

The company regards the judge's recommendation as inadequate and urges addition of $150 million of CWIP to rate base to provide it with the financial resources it says it needs to improve its ratings. In so doing, it says, we effectively would also moderate, preoperationally, the impact of Nine Mile 2. Noting that neither coverage enhancement nor Nine Mile 2 rate moderation increases the company's earnings, RG&E says "the commission should welcome the rare opportunity of doing the ratepayers *a favor; i.e., easing the blow of Nine Mile 2* and *beginning now to avert the cost to them of the higher capital costs associated with less than optimum ratings.'*[65]

The company adds that the judge's 2.6 times cash coverage is less than the 2.66 times coverage permitted in the last case, and the judge should have "erred' on the "high side by allowing some cushion in the event of earnings slippage.'[66] A higher coverage is especially important now, according to the company, because, for the first time, imposition of a modified fuel adjustment clause is recommended and, if adopted, the company would be exposed to a "new risk of earnings shortfall to which it was not previously subjected.'[67] Finally, the company notes that the judge's coverage calculations, though mechanically correct, require an adjustment to reflect the fact that approximately $2 million of corporate debt is allocated to the steam department. Because interest on that debt does not satisfy coverage targets, overall coverage will be below the judge's calculation.

DOL responds that the company has failed to cite record evidence to support its argument that the additional $50 million of CWIP above the judge's $100 million would improve its rating.

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DOL notes that the effect of granting the company's exception would increase RG&E's cash flow by $10 million, but says it is hard to see how increasing RG&E's cash flow by this amount would do more than just help maintain its rating, as opposed to improving it. DOL asserts that rating agencies will improve RG&E's "standing' only after completion of Nine Mile 2. Further, it says, the company has not demonstrated the cost benefits, in dollars and cents, of a preoperational phase-in over a postoperational phase-in.

Staff also responds, renewing its contention that CWIP should not be used as a phase-in of Nine Mile 2, but should be limited to the amount necessitated by interest coverage requirements. On that basis, it endorses the judge's recommendation to add $100 million of CWIP to rate base.

4. Discussion

[10] While it is true, as DOL and CPB point out, that the company has retained its A- rating in more adverse times, suitable regulatory responses to these adverse conditions have helped the company maintain its rating stability. Also, CPB's argument that ratepayers suffer less from bond downrating than they would from the inclusion of the additional CWIP is at odds with our past decisions to help sustain bond ratings.

On balance, the record and precedent support the judge's recommended targeted coverage of about 2.6 times excluding AFC, for it would produce a reasonable level of financial integrity at the minimal levels necessary to strengthen the company's A- rating. This level approximates the 2.66 times cash coverage allowed in the last case, which permitted RG&E to maintain its rating, and is in line with the results recently achieved by the utilities rated A- by Standard & Poor's. Moreover, it is consistent with our expressed desire "to provide [at a minimum] rate relief sufficient to forestall any further deterioration in bond ratings'[68] and with our recent decisions in other cases involving Nine Mile 2 cotenants.[69]

In determining the amount of CWIP commensurate with this target, we cannot ignore factors that might cause the company to fall short of attaining it.[70] For RG&E, these factors include the lower earnings of its steam department and the company's issuance in May, 1985, of $50 million of debt, of which only $25 million is allowed for in setting rates.[71] In these circumstances, we conclude that $150 million of CWIP should be added to the company's rate base in order to afford it a reasonable opportunity of achieving a cash coverage target of 2.6 times. As in the other cases where we have allowed CWIP, our decision balances our concern about the short-term effect of our decision on current ratepayers against our interest, and the interests of all parties, in maintaining the company's financial ratings and minimizing its long-term financing costs.

Finally, consistent with precedent and the judge's recommendation, we shall also provide that the change in the AFC accrual rate be phased in to coincide with the increased revenues attributable to the inclusion of CWIP in rate base. Additionally, we will require that the company continue to accrue a return on the CWIP as if it were not in rate base and that the return on the CWIP be deferred in a separate account so that some or all of the deferrals may be applied over a period shorter than the plant's useful life and thus used, in the early eyars of the plant's life, to lessen its effects on rates.[72]

Phase-in Studies and Rate Moderation

[11] Regarding postoperational phase-in studies, the judge recommends adoption of a CPB proposal to require the company to submit with its next rate filing studies considering three-, fiv e-, and seven-year phase-in periods for Nine Mile 2. Further, he would direct the company to meet with staff, CPB, and any other interested party to design the "parameters of studies that can reasonably be concluded in time for consideration in the company's next rate case.'73 The company has not excepted, and we adopt the recommendation.

RG&E, meanwhile, proposed a preoperational phase-in plan that would add to rate base $150 million of CWIP in the rate year in this case, $425 million in the year the plant goes into service, and $125 million in the year after the plant goes into service.74 RG&E further proposed to defer collection of decommissioning costs until 1989, to accrue and defer AFC on CWIP amounts included in rate base (so they may be used to offset rates after the plant enters service), and to seek reduction in the state revenue tax.

The judge rejected the use of CWIP for preoperational phase-in purposes and, as noted, recommends adding only $100 million of CWIP to rate base the amount needed, in his view, for financial integrity. The company excepts75 and notes that since only $50 million of its approximately $750 million share of Nine Mile 2 is now included in rate base, it would be wise to include the full $150 million of CWIP in this case. Postoperational inclusion, according to the company, may lead to rate shock and prolonged phase-ins, with impaired financial integrity and greater costs to ratepayers. The company adds that given the possibility of a gas rate decrease and a relatively small electric increase, this case provides an opportunity to phase in a larger portion of RG&E's Nine Mile 2 investment without severely affecting ratepayers. Staff had opposed the company's plan as economically inefficient, insofar as it would increase rates further above marginal cost, but the company sees this argument as a "straw man' because sooner or later inclusion of Nine Mile 2 will have that effect.

Staff replies that the judge's recom-mendation should be adopted because it properly limits the amount of CWIP in rate base to only that which is necessary to meet the company's coverage requirement. Staff recalls that it initially rejected the company's rate moderation plan because:

1. the plan promotes economic inefficiency insofar as it increases rates significantly above marginal costs and thus leads consumers to reduce electric consumption by resorting the alternatives that are economically less efficient;

2. the plan unacceptably forces ratepayers to pay a disproportionately large share of the costs in the initial years of operation; and

3. the rate increases can be better moderated by a more gradual and extended phase-in.

Staff objects to the company characterizing its "economic efficiency' argument as a "straw man.' Staff contends that the company has failed to consider that after the start-up on Nine Mile 2, "marginal costs will rise for the next 10 15 years due to the reduction of excess capacity by

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load growth; [while] . . . the company's revenue requirement will likely decline in real terms.'[76] Accordingly, the gap in prices and marginal costs could be reduced during the early years of operation, staff believes, by shifting revenue requirements to the later years of operation, when prices would otherwise be close to or lower than marginal costs. Staff criticizes the company's plan in this regard because it would have the Nine Mile 2-related revenues requirement start to decline *in 1989. Moreover, if inflation is considered, the payments during the plant's early years would be even more disproportionately large.*

Finally, staff points out that the company has not rebutted staff's contention that the rate increase can be moderated in a manner that is more gradual than the company's "three-year 28% rate increase.'[77] Staff believes that identification of the optimal phase-in plan requires further study, and that for now, CWIP should be limited to the amount needed for financial integrity.

Judge Cohen's recommendation was soundly based o n our practice of limiting CWIP to the amount needed for financial integrity. RG&E has shown no basis for departing from that practice, nor has it demonstrated that its phase-in plan is worthy of adoption without consideration of alternatives. Its exception to the judge's refusal to use CWIP for a preoperational phase-in is denied.[78]

Electric Fuel Adjustment Clause

[12] In RG&E's last rate case, we directed that the parties in this case "undertake an examination of a partial passthrough [fuel adjustment clause (FAC)] that contemplates the sharing of fuel-associated risks.'[79] Nonetheless, RG&E only presented evidence here to support continuation of its present 100% FAC. Staff and CPB proposed partial passthrough plans that provided for variations between forecast and actual fuel costs, up to specified levels, to be shared between the company and its customers on a 20%/80% basis. Judge Cohen found RG&E's presentation on its fuel purchasing practices and plant efficiency to be "convincing' and saw no need for a partial passthrough as an incentive to efficiency. Citing the Niagara Mohawk FAC case,[80] however, he recommends a partial passthrough FAC as a means for more equitably apportioning risks between the company and its ratepayers. Specifically, he recommends staff's proposal, which provides for sharing up to a maximum effect of $3.3 million, after taxes, on the company's earnings.[81] He regarded this as consistent with the 0.5% level of equity risk exposure adopted for Niagara Mohawk. RG&E excepts.

In its exceptions, the company criticizes the judge's reliance on Niagara Mohawk Phase II. RG&E notes initially that it was not a party to that case. Second, RG&E considers "too broad' the judge's interpretation that the case generically determined that a partial passthrough was necessary for all jurisdictional utilities. RG&E instead bases its argument on Case 27137[82] (the generic FAC case) to which it was a party. There, according to RG&E, we refused to modify full flow-through FACs and noted that (1) future consideration of FACs was to take place on an individual company basis; and (2) consideration should be focused on the relationship between the FAC and the utility's operating and fuel procurement practices. RG&E therefore believes that

the judge has effectively overruled the generic FAC case.

RG&E continues that because it has been diligent in keeping its fuel costs down, the judge should not have applied to it the same sharing mechanism that was applied to Niagara Mohawk a utility that is allegedly not as diligent in its fuel purchasing practices. RG&E contends that the record demonstrates that the partial FAC is not necessary to promote efficiency on its part.

RG&E next argues that the judge's recommendation will lead to an increase in the costs of electricity, without a demonstrated benefit, to pay for insurance to cover both controllable and uncontrollable fluctuations in fuel prices. The company asserts that if we intend to eliminate all full flow-through FACs, we should do so in a rule-making proceeding on a generic basis. Finally, the company argues that its allowed return on equity should be adjusted to compensate shareholders for the "forced assumption of additional risk.'

In response, staff denies that the generic FAC case may be relied on for the premise that a partial passthrough is proper only if the company is shown to have been less than diligent in minimizing its fuel costs. Staff points out that since the generic FAC case, we have emphasized our interest in using risk sharing mechanisms as an equitable device irrespective of evidence of inefficiency. Moreover, staff says, we expressed our intent to avoid burdensome investigations into the operating practices of individual utilities,83 and the partial passthrough FAC furthers this goal by encouraging all utilities to be "self-policing.' Hence, staff says that RG&E's effort to distinguish itself form Niagara Mohawk is irrelevant. In fact, staff continues, RG&E ma y well be able to achieve greater efficiency in its fuel procurement and operating practices; but even if its current performance is "perfect,' augmented incentives may still be needed in order to maintain a high level of efficiency.

Staff also contests RG&E's claim that because the company is so efficient, ratepayers do not need the protection of a partial passthrough. Staff says that the modified FAC ensures ratepayers not only against the costs of inefficiency but also against fluctuations in fuel costs from whatever source.

Finally, staff contests the company's claim that a partial passthrough will increase costs to ratepayers. Staff argues that ratepayers will benefit by having their risk reduced as well as from the greater efficiency and lower fuel costs that could result from a modified FAC. Regarding the cost of equity, staff also argues that there will be only a minimal increase in risk to RG&E, especially given the attendant 80%/20% sharing mechanism for off-system sales.

CPB also responds, arguing that in Niagara Mohawk Phase II, we recognized that:

1. risk sharing mechanisms affect utility performance positively and reduce rate levels below what they would otherwise have been, and

2. specific partial fuel clauses should be considered to meet the particular needs of each individual electric utility.

CPB particularly notes that RG&E failed to point out that partial passthrough FACs were ordered for NYSEG and Central Hudson in their most recent rate cases. CPB believes that these cases evince a clear intent to adopt partial passthrough FACs for all electric utilities.

CPB adds that a partial passthrough will not cause a significant increase in risk for investors.

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RG&E, CPB believes, has not shown that either rating agencies or investors are concerned that there will be a noticeable increase in risk as the result of the adoption of a partial passthrough. Even assuming arguendo that a slight increase in risk is caused by a risk sharing mechanism, CPB maintains, since Niagara Mohawk Phase II, investors have reflected this possibility in the market price that they are willing to pay for RG&E's common stock. CPB thus argues that the judge, in his equity capitalization rate, has compensated stockholders for any increase in risk caused by the adoption of a partial passthrough.

In the generic FAC case we said that partial passthrough FACs would be considered on an individual company basis, and we have recently established partial passthrough FACs for NYSEG and Central Hudson as well as Niagara Mohawk. We have also made it clear that a partial passthrough FAC may be warranted as an equitable means of sharing risks even without a showing of fuel inefficiency. The record here contains well developed plans by staff and CPB, and it is clear that a partial passthrough FAC offers a reasonable means for sharing risks equitably between RG&E and its ratepayers. Accordingly, we shall adopt staff's plan, which is similar to those adopted for Niagara Mohawk, NYSEG, and Central Hudson, and which imposes on RG&E a maximum earnings exposure of $3.3 million, after taxes. The specific procedure to be used to implement this partial passthrough, including the sales for resale sharing, should be similar to that adopted in the recent RG&E, NYSEG, and Central Hudson cases, in that monthly targets should be established around which sharing would occur.

As a final matter, we shall adopt, consistent with recent precedent, the judge's recommendation that the sharing factor adopted for variations from the imputed level of profits on sales for resale be numerically consistent with the FAC sharing factor. Accordingly, as already noted, profits on electric sales for resale above those imputed in setting base rates, and shortfalls from that level of profits, shall be shared between ratepayers and the company on an 80%/20% basis.

Other Matters

Excess Capacity Studies

The judge rejected CPB's proposal to begin dealing with what the board saw as RG&E's excess capacity by requiring the c ompany to prepare demand elasticity and financial impact analyses for various levels of excess capacity. CPB's proposal, it said, was designed to enable us to consider various rate-making policies that might balance the economic impact on ratepayers and investors of the company's excess capacity. The judge noted that three of the five options suggested by the board would require a disallowance of plant costs, and he therefore regarded it as premature to require the studies in the absence of a showing (which CPB had not made) that the alleged excess capacity had been imprudently constructed. He added, however, that CPB was free to prepare and present the studies itself in RG&E's next case. CPB excepts.

CPB first disputes the judge's implication that a finding of imprudence must precede an order requiring a utility to absorb losses caused by inaccurate business judgments.[84] And even if we found that the alleged excess capacity was the result of prudent planning and did not require

disallowances, CPB continues, the studies would be needed in considering innovative rate-making devices that might mitigate the effect of the capacity on rates. In addition, CPB believes that its limited resources make it unreasonable for the judge to have recommended that it prepare the studies itself.

More particularly, CPB argues that RG&E's current and post-Nine Mile 2 levels of excess capacity rank among the nation's highest, and that by 1988 the company's capacity will substantially exceed the New York Power Pool's reserve requirement. After defending its projection which the company had questioned CPB again lists and evaluates the five options it believes should be studied. CPB asserts that analysis of all of these options would be beneficial in determining the magnitude of any write-off of Nine Mile 2 as well as the correct accounting treatment for recovery of Nine Mile 2 and other assertedly excess capacity costs.

In response, RG&E first emphasizes CPB's own unwillingness to perform the studies even though it regards them as being of such great importance. The company argues also that CPB has not supported the need to perform those studies because it has not shown that excess capacity exists. In addition, the company distinguishes the recent third department case involving its steam rates on the grounds that the noncompensatory rates there were set in conjunction with the phase-out of its soon-to-be-abandoned steam department. Here, in contrast, the subject is RG&E's electric department, a viable and ongoing enterprise.

Judge Cohen found CPB's proposal to be insufficiently supported and premature, and the board's arguments on exceptions, which largely reiterate those to the judge, show no reason to reject his recommendation. Accordingly, we deny CPB's request that the company be directed to undertake these studies. At the same time, we recognize that some studies, such as these, may potentially be instructive, and we direct the company to cooperate fully and provide timely responses to all reasonable requests for pertinent information in the event CPB itself undertakes the studies.

Unit of Production Depreciation

Judge Cohen also rejected CPB's proposal to apply a modified unit of production depreciation method to Nine Mile 2 upon commercial operation and to study further the use of this depreciation method for other RG&E generating units.85 The judge accepted the company's criticism of this depreciation technique i.e., that it posed severe administrative difficulties but invited CPB to submit a more fully developed proposal, dealing with the practical problems, in the next rate case. CPB excepts.

On exceptions, the board says it does not have the resources needed to do the studies at issue, and that unless the company is required to conduct them, we will be denied the opportunity to review the technique fully. It goes on to explain again what it regards as the advantages of unit of production depreciation over straight-line depreciation. CPB recognizes that several problems might hav e to be resolved in moving from straight-line depreciation to a unit of production method for existing plant, but says these difficulties would not apply to new plant, such as Nine Mile 2. Accordingly, the board proposes that we require the company to use the unit of production technique when Nine Mile 2 comes into service. CPB notes as well that other practical problems cited by the company could be addressed in the study CPB would have the

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company conduct.

In response, the company reemphasizes its concern, shared by the judge, that CPB's proposed unit of production depreciation method would present an "administrative and practical nightmare,'[86] and says CPB has not responded to that concern. The company notes as well that a similar CPB request was denied in the recent Central Hudson case.[87]

The company's objections to the proposed studies are sound, for in Central Hudson, we rejected CPB's proposal to require the company to submit unit of production depreciation studies. The board was shown no reason for a different result here. As in Central Hudson, however, we again require "the company's full cooperation and timely responses to all reasonable requests for information pertaining to [alternate methods of] depreciation.'[88]

CPB's Excess Earnings Proposal

CPB requested that the company flow through to ratepayers approximately $3.6 million representing RG&E's alleged excess earnings for the rate year ended July 31, 1984. The judge considered CPB's proposal moot in light of a stipulation, dated December 19, 1984, between the company and the department's office of accounting and finance.[89] The stipulation "recognized that the company inadvertently had used different methods of accounting for depreciation of certain property in computing federal income tax for book and rate-making purposes since September, 1982, to the preset.'[90] The stipulation further provided that, in addition to correcting its presentation in this case, RG&E would amortize through the rate year a $3 million credit, with a rate year impact of about $6.3 million attributable to the credit. On that basis, the stipulation provided that RG&E would be deemed to have had no excess earnings during the rate year ended July 31, 1984.

Judge Cohen recommends approval of the stipulation and that CPB's proposal be considered moot. CPB does not except, and the judge's recommendation is adopted.

Second-stage Increase

[13] The company requested, no party opposed, and the judge recommends granting authorization to file a second-stage increase to reflect expected 1986 increased wage expense. The second-stage filing would follow similar procedures and contain conditions similar to those imposed in RG&E's last rate case. The unopposed request is reasonable and is granted.

Deferred Recognition of Incidental Sales Profits

With staff's concurrence, RG&E requested, and the judge recommends, the same accounting treatment for profits on sales for resale that we have approved after each of the company's last four rate cases on the basis of subsequent petitions. Separate postopinion petitions, the company reasonably asserted, would waste its and our resources.

The company's request is reasonable and is adopted.

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Elimination of Separate Accounting for Pavilion District

[14] In view of the fact that gas rates for its Pavilion district and its Rochester district have been identical since RG&E's last rate case, the company requested, and the judge recommends, elimination of the requirement for separate accounting and record-keeping for the Pavilion district. Separate records have been kept since 1981, when Pavilion Natural Gas was merged into RG&E.

In view of the fact that acceptance of the company's request would eliminate needles complexity in is accounting system, we adopt the proposal.

Electric Rate Design

Marginal Costs

1. Uncontested Matters

Staff reviewed the company's marginal energy cost presentation and recommended its use in this proceeding. Its only crit icism of the company's PROMOD model was its use of the margin on sales to out of state utilities to capture the impact of these sales on New York Power Pool costs. Staff recommended that in its next rate case, RG&E evaluate the actual generation used to make the out of state sales in determining dispatch lambda.

The company reduced its marginal generation capacity cost of $24 per kw per year to staff's recommended $9.51 per kw per year.91 The company and staff also believed that it is proper to use the economic carrying charge to compute marginal capacity and customer costs, though staff offered a modification, unopposed by the company, to the company's method.

Regarding the marginal customer cost, staff used the company's method (with one modification) for purposes of this case, and no issue is presented. Staff expressed reservations about the method, however, and said its analysis was continuing for future cases. Judge Cohen described staff's concerns, but properly saw no need to resolve them here, and we agree with the judge.

2. Marginal Cost Allocation

[15] Of staff's three proposed modifications to RG&E's marginal cost allocations, the company challenged only staff's proposal to reduce the allocation of load-related distribution costs to the classes. Staff's adjustment was intended to reflect the fact that RG&E's minimum distribution system used to determine customer costs was based on a system with a minimal (but not zero) .5 kw capacity. Because the resulting customer cost reflected that capacity to serve a 0.5 kw load, staff contended that the allocation of distribution costs to the classes had to be adjusted for that capacity in order to avoid a double count.

In rejecting staff's proposal, Judge Cohen said:

"RG&E has supported its rationale for treating the entire cost of its minimum grid system as a

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customer cost, even if physically capable of meeting customer demand of .5 kw and for subtracting that cost from total distribution investment in determining the allocation of secondary and primary distribution costs to the classes.[492]

On exceptions, staff notes that it does not dispute the company's calculation of the minimum demand distribution system, its use of that system's cost as the marginal customer cost, or the subtraction of the cost of the minimum demand distribution system from total distribution costs to determine demand-related distribution costs. But it complains again that the company, in allocating those demand-related distribution costs on the basis of each class's maximum demand,[93] fails to consider the demand-related distribution costs already reflected in the marginal customer costs. Staff notes that the minimum demand distribution system represents all the investment necessary to serve some residential customers, and that, for classes with low average demand per customer costs make up an "important' percentage of the total demand-related distribution investment necessary to serve these classes. Thus, in staff's view, the company method would result in an overallocation of marginal costs to classes with lower than average noncoincident demand per customer, while classes with higher than average noncoincident demand per customer would receive less than their fair share. An appropriate allocation of the demand-related distribution costs, in contract, should be based on class noncoincident demands net *of demand met by the minimum demand system.*

The company responds that none of the demand-related costs are reflected in the marginal customer costs. In performing its marginal cost study, the company says, it designed a system based upon a minimum demand of .5 kw per customer because a system based on zero demand would be unrealistic. According to the company, staff ignores the fact that the .5 kw system represents, as a practical matter, the minimum customer cost, and it fails to "recognize that the demand-related portion of a system is designed to transport all the energy required to satisfy the system load .[494] The company concludes that its method does not double count the cost of the minimum grid system.

The judge's conclusion appears sound, for the demand associated with the calculation of the minimum grid investment does not appear to be "double counted.' The company, in determining its distribution-related marginal customer costs, has tried to design a system to hook up its customers to a grid with no demand. The .5 kw system reflects the smallest system that could be designed and the smallest related cost. Thus, the .5 kw has no empirical value; the company sought only to price out the amount of equipment necessary to connect the customers to its system, whether or not demand of .5 kw would actually be imposed. Accordingly, based on the limited record in this case, the judge's recommendation is adopted.

Rate Design[95]

1. SC No. 1 and SC No. 2

[16] The judge adopted the company's proposal to increase the customer charges for SC No. 1 (residential) and SC No. 2 (small general) by $1.12, from $3.85 to $4.97.[96] Staff had

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advocated limiting the increase in the customer charge to one and one-half times the overall revenue increase for SC No. 2, but the judge found that while the company's proposal would increase the customer charge by about 29%, its impact in absolute dollar terms which is of greater concern to ratepayers, in the judge's view was acceptable. The judge continued that because the overall revenue increase in this case is small, staff's percentage limitation "will not significantly further the goal of increasing the percentage recovery of customer marginal cost through the customer charge.'97

In its exceptions, staff argues that its proposal is preferable because it seeks to avoid the inordinately harsh impacts on low usage customers that would result under the company's proposal, especially if the overall increase were small. Staff notes that under the judge's recommended $7.4 million increase, the SC No. 1 and SC No. 2 customer charge of $4.97 would create revenues in excess of the increases allocated to the classes, thus requiring a decrease in energy rates. That, in turn, would decrease bills for high use customers, while increasing those of low use customers. CPB also supports staff's position and stresses the "unnecessary hardships to the poor and low income minimum use ratepayers'98 in these times of curtailed federal programs.

In response, RG&E notes that a limitation of the sort proposed by staff has generally been applied where the overall increase is large, so that the low use customer would not be forced to bear a share of a substantial class increase and a substantially increased customer charge. However, in the instant case, the overall increase will probably be modest, and the seemingly substantial increased customer charge will not unreasonable affect the low use customer. Accordingly, in the company's view, we should take this opportunity to move the customer charge closer to cost now, when ratepayers will not be adversely affected.99 The company adds that its customer charge is the lowest in the state, and, for a typical 250 kwh residential bill, its charges are next to the lowest.

RG&E also criticizes staff's contention that bills for high use customers would decrease. In fact, according to RG&E, all rate blocks in SC Nos. 1, 1A, and 2 would be increased under the judge's revenue requirement and allocation. The company agrees with staff that the rate blocks should not be reduced on account of the increase in the customer charge, though it sees that situation as occurring only if the revenue requirement is substantially below the judge's recommendation.

Even under the company's proposal, the customer charge would remain far below marginal customer cost. Nevertheless, we shall not adopt the company's proposed customer charge, for it would yield class revenues in excess of those allocated to the classes, unless the energy rates were decreased as an offset. Such a decrease in energy rates could result in decreased bi lls for very large customers while the low usage customers would incur high percentage (albeit small absolute) increases. To avoid these divergent effects, we shall, as staff proposes, limit the percentage increase in the customer charge for SC No. 1 and SC No. 2 to one and one-half tims the overall percentage increase for CS No. 2.

2. SC No. 1 A

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The company proposed to increase the customer charge for SC No. 1 A (residential time of use) by the same absolute amount of $1.12, from $3.25 to $4.37, and the judge adopted the company's proposal for the same reasons he cited in approving the company's proposed SC No. 1 and SC No. 2 customer charge increases. Staff excepts, also primarily for the same reasons, though it notes that the judge's "recommended increase in the customer charge would collect additional revenues slightly less than the revenue increase to SC 1 A.'100

The considerations regarding the proper customer charge for SC No. 1 A are similar to those for SC Nos. 1 and 2. Accordingly, the SC No. 1 A customer charge will be limited to approximately one and one-half times the overall increase to the class.

3. SC No. 3

The judge accepted staff's proposal to transfer customers using more than 300 kw from SC No. 3 (general service 100 kw minimum) to SC No. 8 (large general service time of use), and to increase the demand and energy rates of customers remaining in SC No. 3 by an equal percentage.

The judge's recommendation is adopted. Any revenue deficiency resulting from the transfer will be allocated to all classes on the basis of a uniform percentage increase to base revenues net of fuel.

4. SC No. 8

The judge adopted staff's proposed rate design for SC No. 8 (large general service time of use), which increased the demand and energy rates for secondary and primary service on an equal percentage basis (equal to the overall class increase), and also the winter and base season demand charges for transmission service. However, summer *season demand charges for transmission service would be unchanged; while the energy rates would be correspondingly increased by more than the overall class increase. The company, which had offered a different plan, accepted staff's proposal as long as the proposed rates maintained lower charges for transmission service than for primary service and lower charges for primary service than for secondary service. Multiple intervenors (MI) excepts, and staff offers a clarification to the judge's recommendation.*

In adopting staff's proposal, Judge Cohen credited staff's argument that the company's proposed rates, if revised to take account of updated marginal costs, would yield a summer demand charge for transmission service exceeding *that for primary service. Staff's method avoided that anomalous result and maintained a discount between transmission level and primary level annual average demand charges approximately the same as in the company's initial plan.*

In requesting clarification, staff points out that the judge, in summarizing staff's proposal, omits staff's recommendation to increase the energy rates for transmission level customers by a higher percentage than energy rates for primary or secondary level customers since, as explained above, the summer season demand charges for transmission service were not increased. Staff further notes that its recommendation would change the demand energy revenues relationship for

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transmission level customers.

MI responds that staff's increase in the transmission level energy charge is a further reason to reject staff's proposal in favor of the plan initially propounded (but later abandoned) by RG&E.

MI develops the point in its own exception, where it urges use of the method initially advocated by the company. It asserts, contrary to staff, that it relied on updated marginal costs in endorsing RG&E's original plan. Staff's calculations, it continues, which showed an anomalous result if the company's plan were applied to updated costs, were introduced on brief and are uns upported by the record. In MI's view, staff's method produces a discount for transmission level customers below that suggested by cost data. Finally, MI argues that staff and the judge mischaracterized the company's position, for RG&E did not withdraw its own rate proposals in favor of staff's. Rather, according to MI, RG&E only stated that it did not oppose staff's rate design, so long as the appropriate rate hierarchy is maintained.

Staff responds that its proposal properly avoids a shift in revenue responsibility from transmission to other SC No. 8 customers. It notes that it submitted updated SC No. 8 rates late in the proceeding only because neither the company nor MI had done so in response to staff's direct testimony that the rates needed to be updated in light of changes in marginal cost data. To update the rates, staff used the company's method and the updated data; the result was the anomalous transmission level summer demand charge, higher than that for primary service.

The judge's recommendation, as corrected by staff,[101] is sound and is adopted. Staff has demonstrated that the company's original proposal should have been updated to account for significant revisions in marginal cost data, while staff's own proposal properly maintains the hierarchy of rates for transmission, primary and secondary service, and brings the discount between transmission and primary demand charges closer to that suggested by their marginal costs.

Gas Rate Design

SC No. 1

[17] RG&E proposed to restructure SC No. 1 (general service for residential, commercial, industrial, and municipal customers) in a way intended to produce sales of an additional 874,000 DT to medium-size industrial and commercial customers who otherwise might use an alternative fuel.[102] The proposal would add two rate blocks to the existing four; specifically, it would split the existing penultimate block (1,001 100,000 therms) into two (1,001 10,000 therms and 10,001 100,000) and add a new tail block for sales exceeding 250,000 therms.

Staff concurred with, and the judge-recommends, so much of the company's proposal as would (1) restructure SC No. 1 rates from four to six blocks; (2) set the initial block charge (0 3 therms) at $4.50; and (3) set the tail-block rate at 38 per therm. The dispute concerns the treatment of the second through fifth blocks.

The judge adopted staff's recommendation to apply any revenue decrease entirely to the second and third blocks, and retain, for the fourth and fifth blocks, the rates proposed by the

company in connection with its initially proposed rate increase.

On exceptions, the company argues that rate levels are inseparable from the revenue requirement; thus, block rates specifically designed for one revenue requirement may be inappropriate for another revenue requirement. The company would adjust all blocks, except the first and last, on a uniform cents per therm basis. The company notes that it sought to restructure its rates for two reasons to achieve more nearly cost-based rates and to be competitive with No. 6 oil for customers who have dual-fuel capability. The company provides an appendix purporting to show that the judge's recommended rates are not as competitive as the company's proposed rates with the price of No. 6 oil. Thus, the company urges that if we accept the judge's recommendation, the additional 874,000 Dt of sales to medium-sized commercial and industrial customers should not be imputed to rate year revenues and expenses. Instead, it says, there should be an 80%/20% sharing of net revenues from such sales between ratepayers and the company.

Staff responds that its proposed rate structure will permit the additional sales of 874,000 Dt to be achieved. In fact, it says, it is likely that the company will exceed this forecast, in view of the fact that, among other things, the "cost of gas is down *(2 per therm in the last GAC), while the cost of oil is only stable.'*[103] *Accordingly, gas should be more attractive.*

We shall adopt neith er RG&E's proposal nor staff's. First, over the last few weeks, the spot price of No. 6 oil has dropped dramatically.[104] From all indications, it appears that the current depressed price of No. 6 oil may last for some time. As a result, it is unlikely that RG&E's gas, under either proposed rate design, could be competitive with No. 6 oil for medium-sized commercial and industrial customers, and the company's prospects for recapturing the 874,000 Dt of lost load thus are dim. Second, in order to achieve the additional 874,000 Dt of sales and recoup the associated revenue of about $961,000, the rate design modification would reassign almost that same amount of revenue responsibility to small use customers. In addition, it would reduce rates not only to the relatively few medium-sized customers who do have dual-fuel capacity, but to other customers who use gas for process or other purposes, with no alternate fuel. Thus, even if increased sales did result from the change a premise we now seriously question the steps to be taken to produce that increase would not appear worthwhile.[105]

Accordingly, the existing gas rate design should be maintained, and the increased revenues in this case should be recovered by a uniform cents per unit increase applied to the second and third blocks. The increase is too small to warrant an increase to the initial charge, and the tail-block rate should continue to be flexible.

SC No. 5

RG&E proposed initially to increase rates for SC No. 5 (a special rate for large, dual-fuel customers, now serving no customers). However, by letter dated June 6, 1985, the company has requested permission to eliminate SC No. 5 because gas for this class is no longer available from RG&E's supplier. The company's request is reasonable and is granted, consistent with our separate order canceling this serface.[106]

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Conclusion

Our resolution of the issues presented in these cases leads us to conclude that Rochester Gas & Electric Corp. requires additional electric revenues of about $5.800 million and additional gas revenues of about $157,000, as set forth in Appendixes A, B, and C, respectively [omitted herein].

The commission orders:

1. Rochester Gas & Electric Corp. (the company) is directed to cancel the tariff leaves and supplements listed in Appendix C on or before July 13, 1985.

2. The company is authorized to file amendments to its electric and gas tariff schedules designed to produce increased revenues in an amount and manner consistent with this opinion and order. The company shall serve copies of this compliance filing on all parties filing exceptions or replies to exceptions in these proceedings. Any comments on the compliance filing must be received at the commission's offices within ten days of service of the company's proposed amendments. Amendments specified in the compliance filing shall not become effective on a permanent basis until approved by the commission. The company is authorized to file the tariff amendments to go into effect on or after July 14, 1985, subject to refund if any showing is made that the new rates are not in full compliance with this opinion and order. The requirement of § 66(12) of the Public Service Law and 16 NYCRR 136.70 and 270.70, that newspaper publication must be completed before the effective date of the amendments authorized in this paragraph, is waived; but the company shall file with the commission, no later than September 3, 1985, proof that a notice to the public of the changes proposed by the amendments and their effective date has been published once a week for four successive weeks in a newspaper having general circulation in the counties affected by the amendments.

3. The company is authorized to file, to take effect in January, 1986, revisions to its tariff to reflect known increases in its wage expense from the amounts provided in this opinion and order. As part of any request for additional revenues on account of wages and fringe benefits, the company should demon strate that the cost of its wage settlement is in line with similar costs incurred by other regulated as well as nonregulated companies and that the net cost of the wage settlement, including productivity savings, reflects economic conditions that exist at the time, including any employee attrition program. The company shall serve any revisions on all parties required to be served by Ordering Clause 2 above. The revisions filed shall not become effective until approved by the commission.

4. The company is authorized to amortize, over a seven-year period, the loss incurred upon the transfer of land acquired for the abandoned Sterling nuclear power projet, subject to the conditions described in foregoing opinion. The company's filing of tariff leaves designed to recover the revenues authorized by this opinion and order shall be deemed its acceptance of those conditions.

5. Except as here granted, all exceptions to the administrative law judge's recommended

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decision are denied.

6. Except as here modified, the recommended decision of the administrative law judge is adopted as part of this opinion and order.

7. These proceedings are continued.

MEAD and POOLER, commissioners, dissenting:

We respectfully dissent from that portion of the majority decision that would add to rate base additional CWIP, in the amount of $150 million, related to the Nine Mile Point No. 2 nuclear power project. This would increase total CWIP for Nine Mile Point 2 to $200 million.

The majority's primary reason for including the additional CWIP in rate base is to provide a target level of interest coverage that can sustain the company's present "A' bond ratings. But the main factor underlying RG&E's rate year finance and cash-flow requirements and, in consequence, the commission's decision to include an additional $150 million of CWIP in rate base is the company's participation in the Nine Mile Point 2. As we said in the recent Niagara Mohawk Power Corp. case,[107] and other recent cases involving the cotenants, where similar considerations arose,[108] we continue to adhere to our view that construction at Nine Mile 2 ought to have been canceled.

Two glaring reasons support our view.

First, without the inclusion of the additional CWIP, RG&E's rates would be reduced. The judge[109] noted:

"The determinations reached to this point i.e., prior to the inclusion of CWIP in this case indicate a required electric rate decrease of $12,392,000 and a gas rate decrease of $1,570,000. Revenues at this level will provide pretax interest coverage of 3.28 times with AFC and coverage of 2.31 times without AFC.'[110]

The majority, however, increases rates by approximately $5.8 million and thus forfeits the opportunity to reduce rates of RG&E's ratepayers for the first time in years.

Second, under the guise of financial integrity, the majority has tacitly approved the company's rate moderation plan by including in rate base the total amount of CWIP that the company has requested in this case. It did so in spite of its stated agreement with the judge's explicit rejection of the company's request for a preoperational phase-in plan. While we agree with the majority's declared rejection of the rate moderation plan, we believe that by including the fuel request, the majority in effect has accepted "Phase I' of RG&E's preoperational phase-in without submitting this plan to public scrutiny for consideration of alternatives and the impact on ratepayers.

In addition, we note that the company, in May, 1985, has completed its bond issuance which it previously believed would slip into the rate year and increase its cost rate. Moreover, the company does not project the issuance of any bonds or common stock during the rate year. Here, we emphasize CPB's assertion that improvement in RG&E's coverage levels in the rate year and beyond will preclude a bond derating even if rate year coverage without AFC is slightly lower than required by rating agencies. Accordingly, the company's cash flow does not need further

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enha ncement.

We are satisfied that the cost consequences for ratepayers of a derating are far less than the inclusion of the additional $150 million of CWIP in RG&E's rate base. The majority would impose a $5.8 million rate increase on the ratepayers instead of a $23 million decrease[111] in order to save .25% in interest costs as compared to a triple B-rated security and our equivalent savings in common equity return. Assuming the company will issue between $50 and $100 million in debt in the next two years, the present value of .25% savings in interest is $1.86 million and alleged savings on equity return would be $8.1 million. The majority is willing to impose a $5.8 million increase on the ratepayers instead of a $23 million decrease on the assumption that the might *be a downgrading that might cause additional costs of $10 million instead of a real savings of $28.8 million. The revenue burden caused by the addition of CWIP in this case simply can't be justified. While the benefits of the $150 million of CWIP remain speculative, the costs are real.*

As we noted in Niagara Mohawk, we are convinced that the majority has done no more in these cases than give lip service to its repeated, earlier assurances that effects on ratepayers would be considered when setting, for utilities facing substantial construction expenditures, target coverages in excess of 2.8 to 3 times on an SEC basis. For example, the opinion in the generic financing proceeding admonished that the commission's willingness to strive for target coverages above 2.8 to 3 times on an SEC basis would be tempered by concerns over the immediate revenue impact of such a course of action on current ratepayers. In this rate case, however, where a rate decrease would be warranted, but for the decision to include $150 million of CWIP in rate base (to achieve a cash coverage of about 2.6 times), the majority has given no *consideration to the effects of its actions on ratepayers. As has often been the case, the majority's focus is solely upon the need of the company.*

For the foregoing reasons, we believe that the majority's findings are unacceptable in view of the impact on the already beleaguered ratepayers of RG&E.

FOOTNOTES

[1] Cases 28609 et al. Re Rochester Gas & E. Corp. Opinion No. 84 18, July 10, 1984.

[2] Cases 28609 et al., supra, *order authorizing second-stage filing Jan. 30, 1985.*

[3] This recommendation includes recognition of the second-stage gas revenue increase in the last case.

[4] MI filed a letter in lieu of a reply brief on exceptions.

[5] I.e., the company, staff, and CPB.

[6] When adjusted for fuel and revenue taxes, the company's update decreases the revenue requirement by about $252,000.

[7] Internal sales are sales made to other members of the New York Power Pool, while external sales are made outside the pool.

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[8] Based on the imprecise nature of these projections in general, we reject the judge's $250,000 revenue tax adjustment and accept staff's $12 million internal profit level.

[9] See infra, *p. 322.*

[10] RG&E's brief on exceptions, p. 13.

[11] Gas costs were reduced by 2 per therm in the gas adjustment clause filing immediately preceding staff's brief.

[12] Staff's reply brief on exceptions, pp. 5, 6.

[13] See, infra, *pp. 322, 323.*

[14] Cases 28316 and 28612, Re Rochester Gas & E. Corp. Opinion No. 84 19, July 11, 1984.

[15] Cases 28316 and 28612, supra, *order affirming abandonment plan, April 11, 1985.*

[16] Staff's reply brief on exceptions, p. 2.

[17] The $7.4 million loss represents the difference between the company's $9.6 million investment in the land and its recently assessed market value of $2.2 million. The record explains that the difference is due to four factors: a change in the "highest and best' use of the property; the restriction on use of the property imposed by Art 24 of the Environmental Conservation Law; the failure to recover the premiums that the company paid in assembling the large Sterling tract from smaller parcels; and the decline in value of marginal farm land since the company's original purchase. See generally, SM 2600 06.

[18] Case 28166, Re Rochester Gas & E. Corp. Opinion No. 84 23, Aug. 29, 1984.

[19] RD, p. 44.

[20] Case 28695, Re Rochester Teleph. Corp. Opinion No. 84 27, Oct. 12, 1984.

[21] The Uniform System of Accounts § § 168.3 and 168.3(a)(15) state in part:

"168.3(a) The cost of construction properly includible [sic] in the electric plant accounts shall include . . ..

"(15) Law expenditures *include the general law expenditures incurred in connection with the construction and the court and legal costs directly related thereto, . . .'*

[22] Cases 28798 et al. Re Niagara Mohawk Power Corp. Opinion No. 85 4, March 14, 1985.

[23] This percentage includes steam and other company operations in addition to gas and electric.

[24] Case 28695, supra, *Opinion No. 84 27.*

[25] For example, there will be no more evidentiary hearings.

[26] Reflecting a $365,000 disallowance.

[27] DOL's brief on exceptions, p. 14.

[28] RG&E's reply brief on exceptions, p. 5, citing Cases 27909 et al. Re Orange & Rockland

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Utilities, Inc. (1981) 45 PUR4th 235, Opinion No. 81 24.

29 RG&E's reply brief on exceptions, p. 5.

30 Id., p. 6, Footnote 5.

31 Staff's brief on exceptions, p. 7, relying on 16 NYCRR § 61.4.

32 DOL's Brief on exceptions, p. 14.

33 RG&E's reply brief on exceptions, pp. 17 23.

34 As noted above, staff proposed an adjustment based on the premise that 60% of RG&E's legal work could be performed by inside counsel at an hourly rate of $60. The judge accepted the company's criticisms of staff's proposal, two of which are that (1) staff's $60 hourly rate did not include capital and overhead expense costs e.g., furniture, RD, equipment, space, furnishings, library, etc. nor common costs and (2) the percentage of in-house legal expense should more properly be set at 30% not 60%. RD, pp. 38, 39. Again, staff acknowledged that its method "suffers from lack of precision.' Staff's brief on exceptions, p. 8.

35 RG&E's reply brief on exceptions, p. 27.

36 According to the company, the demonstrated flaws in staff's proposal support this contention.

37 RG&E's reply brief on exceptions, p. 30, Footnote 59, citing the study, p. XI 27.

38 Re Dayton Power & Light Co. (Ohio 1982) 45 PUR4th 549, 571, 572.

39 SM 1646. RG&E itself acknowledged that ". . . rate year legal services expense in connection with the Ginna outage can be expected to be somewhat less than in the test period.'

40 RD, pp. 38, 39.

41 While the issue has arisen specifically with regard to RG&E, this is, of course, something we expect of all utilities.

42 SM 2429.

43 E.g., Cases 28838 et al. Re Central Hudson Gas & E. Corp. 67 PUR4th 459, 472, Opinion No. 85 10.

44 RG&E's reply brief on exceptions, p. 33.

45 The judge's figure appears to reflect a computational error. Applying a 25% reduction to 5.7%, as the judge did, suggests a growth term of $4.3%.

46 RD, p. 101.

47 I.e., the increase from $2.20 (55 × 4) in 1985 to $2.36 (59 × 4) in 1986.

48 RG&E's reply brief on exceptions, pp. 35, 37.

49 Id.

50 Cases 28978 et al., supra, *Opinion No. 85 4.*

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[51] Cases 28824 et al. Re New York State Electric & Gas Corp., Opinion No. 85 8, April 9, 1985.

[52] CPB sought to discount RG&E's growth to reflect investors' alleged perception of risks associated with nuclear utilities.

[53] RG&E's brief on exceptions, p. 6 (emphasis in original).

[54] RG&E's brief on exceptions, p. 5.

[55] Assuming a hypothetical total Nine Mile 2 cost of $5.4 billion.

[56] CPB's reply brief on exceptions, p. 8.

[57] DOL's brief opposing exceptions, p. 1.

[58] As a result of past proceedings, $50 million of CWIP is already included.

[59] RD, p. 104.

[60] RG&E's reply brief on exceptions, p. 37.

[61] Id., p. 39.

[62] CPB's brief on exceptions, p. 7.

[63] Id., p. 8.

[64] The company, in criticizing CPB, also incorporates here its arguments made against DOL.

[65] RG&E's brief on exceptions, p. 9.

[66] Id., p. 9.

[67] Id.

[68] Case 27679, Re Financing P lans for New York State Gas and Electric Companies (1982) 49 PUR4th 329, 334, Opinion No. 82 22.

[69] Cases 28798 et al., supra, *Opinion No. 85 4; Cases 28838 et al. Re Central Hudson Gas & E. Corp. (1985) 67 PUR4th 459, 482, et seq., Opinion No. 85 10.*

[70] See, e.g., Cases 28798 et al., supra, *Opinion No. 84 4.*

[71] The latter adjustment follows from staff's earnings base/capitalization adjustment.

[72] See Cases 28609 et al., supra, *Opinion No. 84 18.*

[73] RD, p. 116.

[74] As noted above, $50 million of Nine Mile 2 CWIP already is included in rate base.

[75] While the company believes, as described in the last section, that $150 million of CWIP can be justified on financial integrity grounds alone, it sees the phase-in rationale as "equally, if not more, compelling.'

[76] Staff's reply brief on exceptions, p. 10.

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[77] Id., p. 11.

[78] As explained above, considerations of financial integrity have led us to include in rate base more CWIP than the judge recommended. We nevertheless reject the company's rationale, and agree with staff and the judge that CWIP should not be used as a phase-in, and should be limited to the amount needed for financial integrity.

[79] Cases 28609 et al., supra, *Opinion No. 84 18.*

[80] Case 27741, Re Niagara Mohawk Power Corp. (1983) 56 PUR4th 315, Opinion No. 83 17 ("Niagara Mohawk Phase II').

[81] CPB's proposal was couched in different terms; the judge saw the two proposals as reasonably close in effect.

[82] Case 27137, Re Fuel Adjustment Clauses of Electric Utilities, Opinion No. 80 24, June 18, 1980.

[83] For example, in Niagara Mohawk Phase II, we said (56 PUR4th at p. 327):

"[W]e recognize, as did Judge Furlong, that investigations of the sort undertaken by staff simply cannot be performed on a frequent basis. Thus, the burden of this proceeding is to develop a method through regulation of energy charges that will stimulate the company and for that matter, utilities in general to eliminate inefficiencies in fuel consumption.'

[84] It cites in this regard the appellate division's recent decision upholding our authority to allow RG&E a less than normal return on its steam operations. Rochester Gas & E. Corp. v New York Pub. Service Commission (1985) 108 AD2d 35, 488 NYS2d 303.

[85] Under unit of production depreciation, allowed depreciation expense would vary with the output of the unit being depreciated. CPB sees this mechanism as another means for dealing with excess capacity.

[86] RD, p. 175; RG&E's reply brief on exceptions, p. 46.

[87] Cases 28838 et al., supra, *67 PUR4th at pp. 487, 488.*

[88] Id., mimeo p. 57.

[89] Exhibit 131.

[90] RD, p. 176.

[91] The company's rates for SC No. 9 (buy-back service) should be adjusted accordingly.

[94] RG&E's reply brief on exceptions, p. 42.

[95] For interclass revenue requirement allocation, we shall adopt staff's procedure, unopposed by the company and recommended by the judge.

[96] The judge also recommended that the amount to be obtained from the energy charges for these classes should be collected, as agreed to by the parties, "on a uniform percentage of base rate revenue inclusive of base fuel.' RD, p. 129.

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[97] RD, p. 131.

[98] CPB's reply brief to exceptions, p. 9.

[99] RG&E notes that staff's estimates of marginal customer costs are $18.42 for SC No. 1 and $19.25 for SC No. 2.

[100] Staff's brief on exceptions, p. 22, Footnote 1.

[101] To increase the energy rates for transmission level customers more than energy rates for primary and secondary customers.

[102] The revenue effect of the restructuring is discussed above at pp. 293, 294.

[103] Staff's reply brief on exceptions, p. 5 (emphasis in original).

[104] The drop in price has resulted from decreased demand following the settlement of the British coal strike and from increased supply, as more No. 6 oil has been produced as a by-product of increased production of lighter grade petroleum products.

[105] A better method for recapturing the lost load would be the creation of an interruptible or load management type of rate. The company may wish to propose such a rate for our consideration.

[106] See Case 28898, Re Rochester Gas & E. Corp., June 26, 1985.

[107] Cases 28978 et al. Re Niagara Mohawk Power Corp. Opinion No. 85 4, March 14, 1985, dissenting opinion; Case 28059, Re Inquiry Into the Financial and Economic Cost Implications of Constructing Nine Mile Point No. 2 Nuclear Station, Opinion No. 82 7, April 16, 1982, dissenting opinion.

[108] I.e., Cases 28824 et al. Re New York State Electric & Gas Corp. Opinion No. 85 8, April 9, 1985; Cases 28838 et al. Re Central Hudson Gas & E. Corp. (1985) 67 PUR4th 459, Opinion No. 85 10.

[109] Who added only $100 million of CWIP to rate base.

[110] RD, p. 104 (emphasis supplied).

[111] The cost to RG&E's ratepayers of the $150 million in CWIP is, then, $28.8 million; i.e., the $5.8 million increase plus the $23 million decrease forgone. The $23 million figure differs from the $12.392 million cited by the judge because of other commission adjustments.

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Endnotes

1 (Popup)

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